IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1290 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SIKANDAR HASAN MOHMED PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR BHARAT T RAO for Applicant(s) : 1,
MR RC KODEKAR, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR PUSHPADATTA VYAS for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 19/07/2007

ORAL JUDGMENT

1. Rule. Shri R.C.Kodekar, learned APP waives service of rule on behalf of the respondent No.1 – State and Shri Pushpadatta Vyas, learned advocate waives service of rule on behalf of the

respondent No.2. With the consent of the learned advocates appearing for the respective parties the matter is kept for final hearing today.

2. By way of this petition under Articles 226 and 227 of the Constitution of India r.w. Section 482 of the Cr.P.C., the petitioner has prayed for an appropriate writ, direction and/or order quashing and setting aside the order dated 27.6.2007 passed by the ld Addl. Sessions Judge & Fast Track Court No.6, Bharuch dismissing Cr. Revision Application No. 103 of 2007 confirming the order dated 1.6.2007 passed by the ld JMFC, Jambusar in Cr. Revision Application. It is also further prayed for an appropriate order directing the ld JMFC, Jambusar to return the passport of the petitioner being No. E-2548751 forthwith on appropriate terms & conditions.

3. It is the contention on behalf of the petitioner that a complaint has been registered against the petitioner before the Jambusar Police Station being CR No. I 44 of 2005 on 2.10.2005 for the

offence under Sections 323, 498(A), 114 and 504 of IPC r.w. Sections 3 and 7 of the Prevention of Dowry Act and the said complaint has been filed by the respondent No.2 – wife of the petitioner. It is further submitted that on the same date the respondent No.2 – wife of the petitioner has also filed an application under Section 3 of the Muslim Women Protection on Divorce Act before the ld JMFC for the future maintenance of Rs.15 Lacs and Rs.3.50 Lacs for residential accommodation. It is submitted that prior thereto the petitioner had gone to the Saudi Arebia for service purpose and just after 2 days of his departure, the aforesaid proceedings were initiated by the respondent No.2. It is submitted that the petitioner came back to India in the year 2007 and on coming to know about the proceedings preferred, bail application before the ld JMFC, Jambusar who by its order dated 10.2.2007 was pleased to grant bail on condition to deposit passport and not to leave the limits of Gujarat State and to mark presence on 1st day of every month for 6 months.

It is submitted that as the Visa of the petitioner was expiring on 20.7.2007, the petitioner was required to go to Saudi Arebia failing which, his Visa would expire and the petitioner would also lose his job, the petitioner preferred application before the ld JMFC, Jambusar for return of the passport and revoking condition of not leaving the limits of Gujarat State by application dated 28.5.2007. The ld JMFC, Jambusar by order dated 1.6.2007 rejected the said application. Feeling aggrieved and dissatisfied with the said order, the petitioner preferred Cr. Revision Application No. 103 of 2007 before the ld Sessions Judge, Bharuch and the said revision application came to be heard by the ld Addl. Sessions Judge and Fast Track Court No.6, Bharuch who by its judgment and order dated 27.6.2007 rejected the said revision application confirming the order passed by the ld trial Court in rejecting the application for return of the passport and revoking the condition not to leave the limits of Gujarat. Being aggrieved with the aforesaid

two orders, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India r.w. Section 482 of the Cr.P.C.

4. Shri B.T.Rao, learned advocate appearing for the petitioner has vehemently submitted that both the Courts below have not properly appreciated and realized the facts that if the petitioner is not permitted to go to Saudi Arebia his Visa will be cancelled and that he will also lose his job. It is further submitted that if the petitioner is not permitted to go to Saudi Arebia for the purpose of job, the same will be neither in the interest of the petitioner nor in the interest of the respondent No.2. It is submitted that if the petitioner is permitted to go and permitted to earn, the same will be in the interest of the respondent No.2 also as the petitioner after earning, will be able to pay the amount of maintenance, which may be determined by the ld trial Court. It is submitted by him that to show bonafides the

petitioner is ready and willing to deposit an amount of Rs. 7,50,000/- with the ld JMFC and that the petitioner has no objection, if an appropriate order is passed that the said amount be deposited in a Fixed Deposit in the name of Nazir in any Nationalized Bank and the interest accrued on the said Fixed Deposit be paid to the respondent No.2 without prejudice to the rights and contentions of both the parties towards future maintenance and subject to the ultimate outcome of the proceedings before the ld trial Court. He has also submitted that the petitioner has also submitted necessary undertaking that he will return from Saudi Arebia within a period of 1 week and will return on or before 15th August, 2008. It is also further submitted that to ensure that the petitioner will return, the brother in law of the petitioner has also filed an undertaking to the effect that the petitioner will return from the Saudi Arebia on or before 15th August, 2008. He has also submitted that a further undertaking will also be filed by his brother in law who has filled the affidavit

today to the effect that if the petitioner will not return from Saudi Arebia on or before 15th August, 2008 then he will be held responsible and even he may be sent to Jail. He has also further submitted that so far as the proceedings before the ld trial Court are concerned, the same may be proceeded further and her brother in law who has now been given power of attorney will appear on behalf of the petitioner. This is with a view to avoid any further delay in the proceedings. He has also further submitted that the petitioner has offered two rooms at Islampura for the purpose of residence of the respondent No.2 and if the respondent No.2 so choses, she may accept the said proposal and she may reside in the said property. He has further submitted that necessary undertaking to that effect is also filed by the petitioner. Therefore, it is requested to quash and set aside both the orders passed by both the Courts below and direct the ld JMFC to return the passport to the petitioner and to delete the condition as to not leaving the State of

Gujarat.

5. On the other hand, Shri Pushpadatta Vyas, learned advocate appearing for the respondent No.2 while opposing the present application and relying upon the affidavit in reply has submitted that the respondent No.2 is not paid any maintenance amount since last two years and if ultimately any order is passed against the petitioner, the petitioner may not be available and therefore, to allow the petitioner to go out of country will not be in the interest of respondent No.2 and therefore, it is requested to dismiss the present application.

6. Shri R.C.Kodekar, learned APP has submitted that looking to the undertakings filed by the petitioner and his brother in law and also considering the fact that an amount of Rs. 7,50,000/- is deposited by the petitioner with the ld trial Court, an appropriate order be passed imposing suitable conditions.

7. Heard the learned advocates appearing on behalf of the respective parties.

8. At the outset, it is required to be noted that it is not that the petitioner wants to go to Saudi Arebia for the first time. He is in Saudi Arebia since long and doing job in the Saudi Arebia. After the petitioner left India in the year 2005 after the period of two days the impugned complaint came to be filed and the application was filed for the future maintenance under the aforesaid Act claiming Rs. 15 Lacs towards the future maintenance. When the petitioner came back to India in the year 2007, he came to know about the proceedings and immediately he applied for regular bail and the aforesaid conditions came to be imposed while releasing the petitioner on bail. It is the contention on behalf of the petitioner that as his Visa is to expire, the petitioner is required to go to Saudi Arebia failing which, not only the petitioner will lose his job but also his Visa will be cancelled. It is also to

be noted that to show bonafides the petitioner has also already deposited an amount of Rs.7,50,000/- with the ld trial Court to take care of the situation, if any order is passed in future by the ld trial Court with regard to future maintenance of the respondent No.2. The petitioner has also submitted that the aforesaid amount be deposited in the Fixed Deposit in the name of Nazir and he has no objection, if the respondent No.2 is paid the interest accrued thereon without prejudice to the rights and contentions and subject to the ultimate outcome of the proceedings before the ld trial Court. It is also required to be noted at this stage that as such, as on today, there is no order passed by the ld trial Court against the petitioner with regard to any maintenance amount. Thus, considering the fact that an amount of Rs.7,50,000/- is already deposited by the petitioner with the ld trial Court to take care of the situation that if any order is passed by the ld trial Court in future. It is also to be noted that inspite of any order passed in favour

of the petitioner till date, the petitioner has shown his willingness to pay the interest accrued on the aforesaid amount of Rs. 7,50,000/-. It is also to be noted that the petitioner has given an undertaking before this Court that he will return to India on or before 15th August, 2008. Not only that but his brother in law has also filed a separate undertaking ensuring the return of the petitioner on or before 15th August, 2008. He has also shown his willingness to file further undertaking that if the petitioner will not return to India on or before 15th August, 2008, then in that case, he will be held responsible and may be sent to Jail. Such an additional undertaking to be filed by the brother in law of the petitioner i.e. Abbas Abdulla Patel within a period of 1 weeks from today. Now, considering the aforesaid facts and circumstances, if the petitioner is not permitted to go out of country, more particularly, to Saudi Arebia the Visa of the petitioner would be expired and the petitioner would lose his job. The same will not be either

in the interest of the petitioner or in the interest of the respondent No.2. This Court is of the opinion that if the petitioner is permitted to go to Saudi Arebia in that case the Visa will be renewed and the petitioner would be continued in job and if the petitioner earns, in that case, the petitioner can pay the amount of maintenance to the respondent No.2 if any order is passed. At the same time, the future interest of the respondent No.2 is also to be protected. Now, considering the fact that the amount of Rs.7,50,000/- is already deposited by the petitioner with the ld trial Court, if the same is deposited / invested in the Fixed Deposit for a period of 18 months and the accrued interest is paid to the respondent No.2 without prejudice to the rights and contentions of both the parties subject to the ultimate outcome of the proceedings before the ld trial Court, the same would meet the ends of justice and the same would be in the interest of the petitioner as well as the respondent No.2. Under the circumstances, the impugned order passed by both

the Courts below not returning the passport to the petitioner and not deleting the condition not to leave the limits of Gujarat State requires to be quashed and set aside.

9. For the reasons stated above, present petition succeeds. The orders pass by both the Courts below rejecting the application of the petitioner for return of passport No. E-2548751 and not deleting the condition of not to leave the limits of State of Gujarat are required to be quashed and set aside and are hereby quashed and set aside, on the following terms and conditions.

(A) The petitioner shall return to India on or before 15th August, 2008.

(B) The amount of Rs.7,50,000/- deposited by the petitioner with the ld JMFC, Jambusar be invested in any Fixed Deposited in Nationalized Bank in the name of Nazir initally for a period of

18 months and the periodical interest on the said amount be paid to the respondent No.2 by Account Payee Cheque without prejudice to the rights and contentions of both the parties and subject to the ultimate outcome of the proceedings pending before the ld trial Court.

(C) The additional undertaking, as stated hereinabove, to be filed by the brother in law of the petitioner i.e. Abbas Abdulla Patel within a period of 1 weeks from today.

(D) It will always be open for the respondent No.2 to accept the offer of the petitioner to reside in the two rooms at Village Islampura, Taluka Jambusar, District Bharuch as offered by the petitioner in his affidavit / undertaking dated 18.7.2007. The proceedings before the ld trial Court

may continue even in absence of the petitioner as agreed by the petitioner and the brother in law of the petitioner shall appear before the ld trial Court as it is reported that he is already having power of attorney.

10. Under the circumstances, the ld JMFC, Jambusar is directed to return the passport of the petitioner and the petitioner is permitted to go out of country with the aforesaid terms & conditions. Rule is made absolute to the aforesaid extent.

Direct Service is permitted.

(M.R. SHAH,J.)

kdc